

1 JOSEPH P. RUSSONIELLO (SBN 44332)

United States Attorney

2 JOANN M. SWANSON (SBN 88143)

Chief, Civil Division

3 MICHAEL T. PYLE (SBN 172954)

Assistant United States Attorney

4 450 Golden Gate Avenue, Ninth Floor

5 San Francisco, California 94102

Telephone: (415) 436-7322

6 Facsimile: (415) 436-6748

Email: michael.t.pyle@usdoj.gov

7 Attorneys for UNITED STATES OF AMERICA

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9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION
12

13 CARL P. MCDONOUGH,

14 Plaintiff,

15 v.

16 UNITED STATES OF AMERICA,

17 Defendant.
18

No. C 07-3087 MMC

**STIPULATION FOR COMPROMISE
SETTLEMENT AND RELEASE;
[PROPOSED] ORDER**

1 THE PARTIES, THEIR ATTORNEYS OF RECORD, AND NON-PARTY ROBERT
2 DE SILVA HEREBY SUBMIT THE FOLLOWING STIPULATION FOR COMPROMISE
3 SETTLEMENT AND RELEASE (hereinafter, "Stipulation and Agreement"):

4
5 IT IS HEREBY STIPULATED AND AGREED as follows:

- 6 1. The parties to this Stipulation and Agreement are plaintiff Carl P. McDonough
7 (hereinafter "Plaintiff") and Mr. Robert de Silva, on the one hand, and defendant
8 United States of America, on the other hand. Plaintiff, Mr. de Silva, and the
9 United States of America are collectively referred to in this Stipulation and
10 Agreement as "the Parties" and individually as a "Party."
- 11
12 2. Plaintiff and the United States hereby agree to settle and compromise the above-
13 entitled action under the terms and conditions set forth herein. Mr. de Silva
14 specifically represents and warrants the following: he is Plaintiff's brother and the
15 son of Carl A. McDonough and he has not filed or submitted any suit or claim
16 regarding the death of Carl A. McDonough.
- 17
18 3. The United States agrees to pay to Plaintiff the sum of Two Hundred Thousand
19 Dollars and No Cents (\$200,000), made payable to The Furtado, Jaspovice &
20 Simons Trust Account, under the terms and conditions set forth herein, which sum
21 shall be in full settlement and satisfaction of any and all claims, demands, rights,
22 and causes of action of whatsoever kind and nature, arising from, and by reason of
23 any and all known and unknown, foreseen and unforeseen bodily and personal
24 injuries, damage to property and the consequences thereof, resulting, and to result,
25 from the same subject matter that gave rise to the above-captioned lawsuit, for
26 which Plaintiff and/or Mr. de Silva, their heirs, executors, administrators, or
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1 assigns, and each of them, now have or may hereafter acquire against the United
2 States of America or its agents, servants, and employees.

- 3
4 4. Plaintiff and his heirs, executors, administrators or assigns hereby agree to accept
5 the sum of Two Hundred Thousand Dollars and No Cents (\$200,000) in full
6 settlement and satisfaction of any and all claims, demands, rights, and causes of
7 action of whatsoever kind and nature, arising from, and by reason of any and all
8 known and unknown, foreseen and unforeseen bodily and personal injuries,
9 damage to property and the consequences thereof which they may have or
10 hereafter acquire against the United States of America or its agents, servants and
11 employees on account of the same subject matter that gave rise to the above-
12 captioned lawsuit. Plaintiff and his heirs, executors, administrators or assigns
13 further agree to reimburse, indemnify and hold harmless the United States of
14 America and its agents, servants or employees from any and all such causes of
15 action, claims, liens, rights, or subrogated or contribution interests incident to or
16 resulting from further litigation or the prosecution of claims by Plaintiff or his
17 heirs, executors, administrators or assigns against any third party or against the
18 United States of America.

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22 5. Mr. de Silva and his heirs, executors, administrators or assigns hereby agree that
23 the payment of the sum of Two Hundred Thousand Dollars and No Cents
24 (\$200,000) to Plaintiff is in full settlement and satisfaction of any and all claims,
25 demands, rights, and causes of action of whatsoever kind and nature, arising from,
26 and by reason of any and all known and unknown, foreseen and unforeseen bodily
27 and personal injuries, damage to property and the consequences thereof which Mr.
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1 de Silva may have or hereafter acquire against the United States of America or its
2 agents, servants and employees on account of the same subject matter that gave
3 rise to the above-captioned lawsuit. Mr. de Silva and his heirs, executors,
4 administrators or assigns further agree to reimburse, indemnify and hold harmless
5 the United States of America and its agents, servants or employees from any and
6 all such causes of action, claims, liens, rights, or subrogated or contribution
7 interests incident to or resulting from further litigation or the prosecution of
8 claims by Mr. de Silva or his heirs, executors, administrators or assigns against
9 any third party or against the United States of America.
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12 6. In consideration of the payment of Two Hundred Thousand Dollars and No Cents
13 (\$200,000.00) and the other terms of this Stipulation and Agreement, Plaintiff
14 agrees to immediately upon execution of this Stipulation and Agreement, execute
15 the accompanying Stipulation For Dismissal with Prejudice, which stipulation
16 shall dismiss, with prejudice, all claims asserted in this Action or any claims that
17 could have been asserted in this Action, which is captioned Carl P. McDonough v.
18 United States of America, C 07-3087 MMC. The fully executed Stipulation For
19 Dismissal with Prejudice will be held by counsel for the defendant and will be
20 filed with the Court upon receipt by Plaintiff's counsel of the settlement amount
21 and the completion of the settlement terms described herein.
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24 7. This Stipulation and Agreement is entered into by all Parties for the purpose of
25 compromising disputed claims and avoiding the expenses and risks of litigation.
26 This settlement does not constitute an admission of liability or fault on the part of
27 any Party.
28

- 1 8. It is agreed, by and among the Parties, that no Party may make any claim for
2 attorney's fees or other costs or expenses of litigation against the United States,
3 their agents, servants, or employees in connection with any claims or suits arising
4 out of the death of Carl A. McDonough.
5
- 6 9. It is agreed, by and among the Parties, that this Stipulation and Agreement may be
7 pled as a full and complete defense to any subsequent action or other proceeding
8 which arises out of the claims released and discharged by this Stipulation and
9 Agreement.
10
- 11 10. It is agreed, by and among the Parties, that the settlement amount of Two Hundred
12 Thousand Dollars and No Cents (\$200,000.00) paid by the United States of
13 America to Plaintiff represents the entire amount of the compromise settlement
14 and that the respective Parties will each bear their own costs, fees, and expenses
15 and that any attorneys' fees owed by the Plaintiff will be paid out of the settlement
16 amount and not in addition thereto. Mr. de Silva understands and agrees that by
17 his agreement in this Stipulation and Agreement to release the United States of
18 America and its agents, servants or employees from any and all liability regarding
19 the death of his father, Carl A. McDonough, his only recourse with regard to any
20 claim against the United States of America and its agents, servants or employees
21 regarding the death of his father, Carl A. McDonough shall be to seek a portion of
22 the Two Hundred Thousand Dollars and No Cents (\$200,000.00) to be paid by the
23 United States of America to Plaintiff and that he must seek that portion from
24 Plaintiff and not from the United States of America.
25
- 26 11. The Two Hundred Thousand Dollars and No Cents (\$200,000.00) to be paid to
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1 Plaintiff pursuant to the terms of this Stipulation and Agreement will be made by
2 wire transfer or other electronic means to a bank account to be designated in
3 writing by Plaintiff's counsel. Plaintiffs' counsel shall be responsible for
4 distributing the funds to Plaintiff. Plaintiff shall be responsible for distributing
5 any funds to Mr. de Silva, as may be agreed by Plaintiff and Mr. de Silva or as
6 may be ordered by the Court.
7

- 8 12. Counsel for the United States of America will submit a request for Judgment Fund
9 payment within 48 hours after the Court approves this Stipulation and Agreement.
10 The Parties recognize that payment from the Judgment Fund is often not available
11 for 45 to 60 days after approval of the settlement by the Court.
12

- 13 13. Plaintiff and Mr. de Silva hereby release and forever discharge the United States
14 of America and any and all of its past and present officials, employees, agents,
15 attorneys, their successors and assigns, from any and all obligations, damages,
16 liabilities, actions, causes of actions, claims and demands of any kind and nature
17 whatsoever, whether suspected or unsuspected, at law or in equity, known or
18 unknown, arising out of the allegations set forth in Plaintiff's pleadings in this
19 action and/or arising out of the death of Plaintiff and Mr. de Silva's father, Carl A.
20 McDonough.
21

- 22 14. Plaintiff and Mr. de Silva each specifically represent and warrant the following:
23 there are no surviving or pre-deceased children of Plaintiff and Mr. de Silva's
24 father, Carl A. McDonough other than the two of them, and that Carl A.
25 McDonough left no surviving spouse or domestic partner. Plaintiff and Mr. de
26 Silva understand that this warranty is a material provision in this settlement
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1 agreement.

2 15. The provisions of California Civil Code Section 1542 are set forth below:

3 "A general release does not extend to claims which
4 the creditor does not know or suspect to exist in his
5 favor at the time of executing the release, which if
6 known by him must have materially affected his
7 settlement with the debtor."

8 Plaintiff and Mr. de Silva, having been apprised of the statutory language of Civil
9 Code Section 1542 by an attorney of their choosing, and fully understanding the
10 same, nevertheless elect to waive the benefits of any and all rights they may have
11 pursuant to the provision of that statute and any similar provision of federal law.
12 Plaintiff and Mr. de Silva understand that, if the facts concerning injuries or
13 liability for damages pertaining thereto are found hereinafter to be other than or
14 different from the facts now believed by them to be true, this Stipulation and
15 Agreement shall be and remain effective notwithstanding such material
16 difference.
17

18 16. The Parties agree that this Stipulation and Agreement is intended to be a full and
19 final settlement of all claims arising out of the allegations set forth in Plaintiffs'
20 pleadings in this action.
21

22 17. This Stipulation and Agreement shall constitute the entire agreement between the
23 Parties, and it is expressly understood and agreed that this Stipulation and
24 Agreement has been freely and voluntarily entered into by the Parties hereto with
25 the advice of counsel of each Party's choosing, which counsel have explained the
26 legal effect of this agreement. The Parties further acknowledge that no warranties
27 or representations have been made on any subject other than as set forth in this
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1 Stipulation and Agreement. This Stipulation and Agreement may not be altered,
2 modified or otherwise changed in any respect except by writing, duly executed by
3 all of the Parties or their authorized representatives.
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5 18. If any withholding or income tax liability is imposed upon Plaintiff or Mr. de
6 Silva based on payment of the settlement sum as set forth herein, Plaintiff or Mr.
7 de Silva shall be solely responsible for paying any such liability.

8 19. The Parties agree that the District Court shall retain jurisdiction over this matter
9 for the purposes of resolving any dispute alleging a breach of this Stipulation and
10 Agreement, including any dispute of any kind that may arise between Plaintiff and
11 Mr. de Silva regarding the allocation of the Two Hundred Thousand Dollars and
12 No Cents (\$200,000.00) to be paid by the United States of America to Plaintiff
13 pursuant to the terms of this Stipulation and Agreement.
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15 20. Each Party acknowledges that they have been represented by and have relied upon
16 independent counsel in negotiating, preparing and entering into this Stipulation
17 and Agreement and that they have had the contents of this Stipulation and
18 Agreement fully explained by counsel and that they are fully aware of and
19 understand all of the terms of the agreement and the legal consequences thereof.
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21 It is further acknowledged that the Parties have mutually participated in the
22 drafting of this Stipulation and Agreement and it is agreed that no provision
23 herein shall be construed against any Party hereto by virtue of the drafting of this
24 Stipulation and Agreement.
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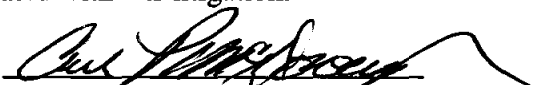
26 21. If any provision of this Stipulation and Agreement shall be held invalid, illegal, or
27 unenforceable, the validity, legality, and enforceability of the remaining
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1 provisions shall not in any way be affected or impaired thereby. This instrument
2 shall constitute the entire agreement between the parties, and it is expressly
3 understood and agreed that this agreement has been freely and voluntarily entered
4 into by the parties hereto with the advice of counsel, who have explained the legal
5 effect of this agreement. The Parties further acknowledge that no warranties or
6 representations have been made on any subject other than as set forth in this
7 Stipulation and Agreement.
8

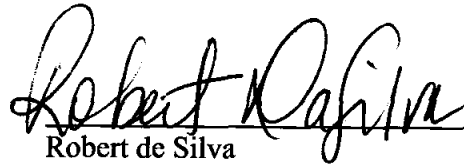
9
10 22. The Parties agree that, should any dispute arise with respect to the implementation
11 of the terms of this Stipulation and Agreement, no Party shall seek to rescind the
12 Stipulation and Agreement and pursue any of the original causes of action. Each
13 Party's sole remedy in such a dispute is an action to enforce the Stipulation and
14 Agreement in district court. The Parties agree that the district court will retain
15 jurisdiction over this matter for the purposes of resolving any dispute alleging a
16 breach of this Stipulation and Agreement. This Stipulation and Agreement may
17 be signed in counterparts, and any signature on a signature page transmitted by
18 facsimile or by PDF shall be treated the same as an original signature and shall be
19 deemed binding and fully effective.
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22 23. The Parties further agree that the filing of this executed Stipulation and
23 Agreement shall notify the Court of the agreement by Plaintiff and the United
24 States to vacate all pending discovery, motion hearing dates, settlement or pretrial
25 deadlines and trial date associated with this litigation.
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27 DATED: February __, 2008

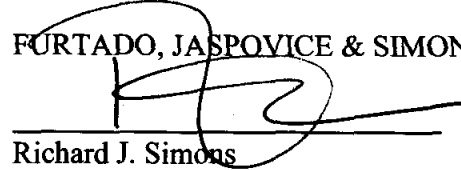
28 
Carl P. McDonough, Plaintiff

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2 DATED: February __, 2008


Robert de Silva


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4 DATED: February __, 2008

FURTADO, JASPOVICE & SIMONS

5
6 
Richard J. Simons
Attorneys for Plaintiff

7
8 DATED: ^{March} February 28, 2008

JOSEPH P. RUSSONIELLO
United States Attorney

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10 
Michael T. Pyle
Assistant United States Attorney
Attorneys for Defendant United States of America

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13 **PURSUANT TO STIPULATION, IT IS SO ORDERED:**

14
15 DATED: _____

The Honorable Maxine M. Chesney
United States District Judge